As regards the balance of convenience Buttrose J. in the court below came to the conclusion on the evidence that greater damage would arise to Beecham by withholding the injunction in the event of them succeeding than to the defendants by granting the injunction in the event of the injunctiotn proving afterwards to have been wrongly granted. We now have to deal only with the position between Beecham and Sime Darby and we are of the opinion that the balance of convenience is clearly in favour of granting the interlocutory injunction. The harm caused to Beecham by withholding the injunction should they eventually succeed would in our opinion be immeasurably greater than the harm that would be caused to Sime Darby should their defence to the action for infringement eventually succeed.

For all these reasons we would allow the appeal by Bristol and dismiss the appeal by Sime Darby. The order for costs made by Buttrose J. stands as there is no appeal against that order. Beecham, the respondents are entitled as against Sime Darby to the costs here. As between Beecham and Bristol each party should bear its own costs of the appeal. We certify for two counsel.

Appeal by the 1st appellant dismissed.

Appeal by the 2nd appellant allowed.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

PUBLIC PROSECUTOR v. PERIASAMY

[A.Cr.J. (Chang Min Tat J.) August 15, 1968]
[Ipoh — Criminal Appeal No. 3 of 1968]

Income Tax — Late filing of returns — Allegation of insufficient time to file returns — Returns not filed after 5 months from return date of summons — Proper sentence — Income Tax Ordinance, 1947, s. 61A.

This was an appeal against the magistrate's sentence cautioning and discharging the respondent on his plea of guilty to not filing his income tax returns within 30 days from the date they were sent to him. In fact the returns had not been filed when the summons was taken out some five months after the returns were sent to him.

Held: in the circumstances of this case it cannot be properly said that the respondent had no sufficient time to compile the returns and submit them and the sentence should be set aside and a fine of $150 imposed.

Case referred to:—

(1) *Public Prosecutor* v. *Lee Seng Seh* [1966] 1 M.L.J. 266.

MAGISTRATE'S CRIMINAL APPEAL.

M. Mahalingam (Deputy Public Prosecutor) for the appellant.

G. Moganasundram for the respondent.

Chang Min Tat J. (delivering oral judgement): This is an appeal against the learned magistrate's sentence cautioning and discharging the respondent on his plea of guilty to an offence under section 61A of the Income Tax Ordinance No. 48 of 1947.

As I have on several occasions said, I am always loathe to disturb the sentence of the learned trial magistrate but where the learned magistrate has proceeded on wrong grounds then it becomes my duty to assess the adequate sentence. Before proceeding to do so, I propose to treat the respondent as a first offender in view of the failure of the prosecution to prove adequately and satisfactorily the previous conviction of the respondent on a similar charge.. It is however submitted to me with great persuasion that the respondent had not sufficient time to submit his returns. This submission carried great force also with the magistrate. The magistrate also considered that the two forms in which the respondent was required to fill the particulars required were voluminous and could not be completed in a short time.

The forms were sent to the respondent on the 8th November, 1967 and the respondent was required to fill in the particulars within 30 days, that is on or before the 8th December, 1967. The particulars were, I find, nothing more or less than the summary of the respondent's previous returns for the year 1960 — 1966. They are a repeat of what the respondent had previously submitted and were required as is the well known practice of the Department of Inland Revenue in their re-examination of any particular taxpayer's return. Such particulars were not voluminous nor should they be difficult to obtain. In any event the summons was not taken out until the 28th March, 1968. The return date was the 2nd May, 1968. The respondent had 5 months at the least in which to make the returns. If at any time between the 8th December, 1967 and the 2nd May, 1968, he had made the returns then I am very sure that on the return date of the summons a sentence cautioning and discharging the respondent would have been made by the magistrate and would have been the proper one. The fact was, as I take it, that on the 2nd May, 1968, the returns had not as yet been made. In the circumstances of the case I do not think it can be properly said that the respondent had no sufficient time to compile the returns and submit them.

The sentence is set aside. I record the conviction on his plea of guilty and I impose a fine of $150.

In conclusion I would recommend to magistrates in dealing with Income Tax cases to pay some attention to what my learned brother Raja Azlan Shah has said in *Public Prosecutor* v. *Lee Seng Seh* [1] at page 267.

Appeal allowed.

Solicitors: *Yeoh Kian Teik & Co.*